1947.

File No. O.I.P.(E.P.) 47 Pt. I

Legal DEPARTMENT

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Subject:—

Opinions under Indian Press (Emergency Powers) Act, 1931.

For Subsequent papers pl. see pt. II

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Statement of the Case.

The question in these papers is whether articles under the headings "Story of the atrocities perpetrated by Muslim Goondas in East Bengal" "One and a quarter lakhs of Hindus forcibly converted" "Facts(obtained)from personal inquiry by the Arya Samaj" published in the the issue of Bharat, come within the purview of section 4(1)(h) of the Indian Press(Emergency Powers) Act, 1931.

2. Under clause(h) of sub-section(1) of section 4 of the Indian Press (Emergency Powers) Act, 1931, action can be taken by the Provincial Government against any printing press in respect of which any security has been ordered to be deposited under section 3 and which is used for the purpose of printing or publishing any newspaper, book or other document containing anywords, signs or visible representations which tend directly or indirectly to promote feelings of enmity or hatred between different classes of His Majesty's subjects. According to Explanation 4 to sub-section (1) of section 4, words pointing out, without malicious intention and with honest view to their removal, matters which are producting or having a tendency to produce feelings of enmity or hatred between different classes of His Majesty's subjects shall not be deemed to be words of the nature described in clause(h)of the said sub-section. In view of the gruesome details as regards the atrocities said to have been perpetrated by Muslims on Hindus living in Noakhali District in East Bengal during the communal disturbances in the article published in the issue of Bharat, dated the 8th January 1947 under the captions "Story of the atrocity perpetreated by Muslim Goondas in East Bengal" "One and a quarter lakhs of Hindus forcibly converted" "Facts(obtained) from personal inquiry by the Arya Samaj" has a distinct tendency to foment communal hatred and what the editor has written constitutes undoubtedly matters which have a tendency to produce feelings of enmity or hatred between the two communities. Considering the effect that the words used in the article are likely to produce on the minds of the readers and the circumstances under which the article was published and the state of mind of the people to whom it was addressed it appears that the article can be said to be hit by clause(h)of section4(1). But the editor can take shelter under Explantion 4 to section 4(1) and contend in his defence that he merely pointed out the matters without any malicious intention, and with an honest view to removal thereof and that

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and that the descripton could not have been worded differently by a man without malicious intention.

3. As the matter is however important the Advocate General is requested to give his opinion whether the article in the issue of Bharat comes within the mischief of clause(h) of sub-section (1) of section 4 of the the Indian Press(Emergency Powers.) Act, 1931.

Sd/- D.V. Vyas

Remembrancer of Legal Affairs.

U.O.R. to the Advocate General, Bombay No.2277, dated the 8th March 1947.

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No. 17 of 1947.

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ADVOCATE GENERAL'S CHAMBERS
HIGH COURT,
Bombay, 31st March 1947.

U.O.R. to the Advocate General, Bombay,
No. 2277, dated the 8th March 1947.

OPINION

I am of opinion that the report headed "Story of the atrocities perpetrated by Muslim Goondas in East Bengal" is within the mischief of Section 4(h) of the Press Emergency Powers Act, in that it tends to promote feelings of enmity and hatred between Hindus and Muslims. The test under that Section is the tendency of the report regardless of the intention of the writer.

There is, however, an exception to the Section which exempts from liability any words which point out matters of the nature there mentioned with an honest view to their removal and without malicious intention. That "intention and view" can only be established by the person responsible for the words. I take it that the report as contained in the papers sent to me is complete and that there is no other article or paragraph in the same issue of the paper which has any bearing on the report in question, and further, that it is not a continuation of some other earlier Article or report or connected with some previous or later Article or report, which may show that in publishing the report in question, the writer had a particular intention or view. The report in question does not itself suggest any remedy for the state of affairs described, and it will be difficult for the person responsible to show an intention and a view which he has not cared to express anywhere. If the report stands by itself, I think the exception will not apply.

Sd/- C.K. Daphtary

Advocate General.

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If the report headed: "Story of the atrocities perpetrated by Muslim Goondas in East Bengal" as contained in the papers sent to the Remembrancer of Legal Affairs is complete and stands by itself, it comes within the mischief of section 4(1) of the Press Emergency Powers Act, 1931.

Sd/- D.V.V.

Remembrancer of Legal Affairs.

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U.R. to H.D.(Poll.) No. 3424 dated the 9th April 1947.

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Section 131 I.P.C. Prescribes punishment for abetting mutiny or attempting to seduce a soldier sailor or airman from duty: and if mutiny is committed as a consequence of such abetment the punishment is prescribed under section 132. Both of these offences are cognisable. "The offence of mutiny consists in extreme insubordination as if a soldier resists by force or if a number of soldiers rise against or oppose their military superiors, such acts proceeding from alleged or pretended grievances of a military nature." (See Ratanlal's Law of Crimes Pages 324,325). The article entitled "Unwritten History" contributed by Lt.J. Kani to Forum contains an account of why the ratings of the R.I.N. mutined, how they fought and why at last they unconditionally surrendered. In giving this account Lt. J Kani has confessed to having advised that as soon as the C.C.O. ratings struck work the ratings of the P.W.S.S. (Post War Signal Station inside R.I.N. Dockyard) should also do the same and to having joined the mutineers and carried on the struggle cheering and aiding his comrades until they unconditionally surrendered against his wish. This article read as a whole appears to have a tendency to incite or encourage a mutiny among the armed forces and contains words which directly or indirectly express approval or admiration of the offence of mutiny and which tend directly or indirectly to seduce the armed forces from their allegiance or duty on the ground of some real or unreal grievances. The offence of mutiny being a cognisable offence, the article appears to come within clauses (a),(b)and (c) of section 4(1) of the Press (Emergency Powers) Act, 1931. The view taken by the Government of India appears to be correct.

Sd/-

Remembrancer of Lebal Affairs.

U.R. to H.D. (Political), No. 3742,dated the 17th April 1947.

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